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COMMITTEE AGAINST TORTURE
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VIEWS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Communication No. 149/1999

Submitted by:	A. S. (name withheld) [represented by counsel]
Alleged victim:	The author
State party:	Sweden
Date of communication:	6 November 1999

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2000,

Having concluded its consideration of communication No. 149/1999, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1.1. The author of the communication is A. S., an Iranian citizen currently residing with her son in Sweden, where she is seeking refugee status. The author and her son arrived in Sweden on 23 December 1997 and applied for asylum on 29 December 1997. Ms. S. claims that she would risk torture and execution upon return to the Islamic Republic of Iran and that her forced return to that country would therefore constitute a violation by Sweden of article 3 of the Convention. The author is represented by counsel.

1.2. In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted communication No. 149/1999 to the State party on 12 November 1999. Pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, the State party was requested not to expel the author to Iran pending the consideration of her case by the Committee. In a submission dated 12 January 2000 the State party informed the Committee that the author would not be expelled to her country of origin while her communication was under consideration by the Committee.

The facts as presented by the author

2.1. The author submits that she has never been politically active in Iran. In 1981, her husband, who was a high-ranking officer in the Iranian Air Force, was killed during training in circumstances that remain unclear; it has never been possible to determine whether his death was an accident. According to the author, she and her husband belonged to secular-minded families opposed to the regime of the mullahs.

2.2. In 1991, the Government of the Islamic Republic of Iran declared the author's late husband a martyr. The author states that martyrdom is an issue of utmost importance for the Shia Muslims in Iran. All families of martyrs are supported and supervised by a foundation, the Bonyad-e Shahid, the Committee of Martyrs, which constitutes a powerful authority in Iranian society. Thus, while the author and her two sons' material living conditions and status rose considerably, she had to submit to the rigid rules of Islamic society even more conscientiously than before. One of the aims of Bonyad-e Shahid was to convince the martyrs' widows to remarry, which the author refused to do.

2.3. At the end of 1996 one of the leaders of the Bonyad-e Shahid, the high-ranking Ayatollah Rahimian, finally forced the author to marry him by threatening to harm her and her children, the younger of whom is handicapped. The Ayatollah was a powerful man with the law on his side. The author claims that she was forced into a so-called sighe or mutah marriage, which is a short-term marriage, in the present case stipulated for a period of one and a half years, and is recognized legally only by Shia Muslims. The author was not expected to live with her sighe husband, but to be at his disposal for sexual services whenever required.

2.4. In 1997, the author met and fell in love with a Christian man. The two met in secret, since Muslim women are not allowed to have relationships with Christians. One night, when the author could not find a taxi, the man drove her home in his car. At a roadblock they were stopped by the Pasdaran (Iranian Revolutionary Guards), who searched the car. When it became clear that the man was Christian and the author a martyr's widow, both were taken into custody

at Ozghol police station in the Lavison district of Tehran. According to the author, she has not seen the man since, but claims that since her arrival in Sweden she has learned that he confessed under torture to adultery and was imprisoned and sentenced to death by stoning.

2.5. The author says that she was harshly questioned by the Zeinab sisters, the female equivalents of the Pasdaran who investigate women suspected of "un-Islamic behaviour", and was informed that her case had been transmitted to the Revolutionary Court. When it was discovered that the author was not only a martyr's widow but also the sighe wife of a powerful ayatollah, the Pasdaran contacted him. The author was taken to the ayatollah's home where she was severely beaten by him for five or six hours. After two days the author was allowed to leave and the ayatollah used his influence to stop the case being sent to the Revolutionary Court.

2.6. The author states that prior to these events she had, after certain difficulties obtained a visa to visit her sister-in-law in Sweden. The trip was to take place the day after she left the home of the ayatollah. According to the information submitted, the author had planned to continue from Sweden to Canada where she and her lover hoped to be able to emigrate since he had family there, including a son. She left Iran with her younger son on a valid passport and the visa previously obtained, without difficulty.

2.7. The author and her son arrived in Sweden on 23 December 1997 and applied for asylum on 29 December 1997. The Swedish Immigration Board rejected the author's asylum claim on 13 July 1998. On 29 October 1999, the Aliens Appeal Board dismissed her appeal.

2.8. The author submits that since her departure from Iran she has been sentenced to death by stoning for adultery. Her sister-in-law in Sweden has been contacted by the ayatollah who told her that the author had been convicted. She was also told that the authorities had found films and photographs of the couple in the Christian man's apartment, which had been used as evidence.

2.9. The author draws the attention of the Committee to a report from the Swedish Embassy in Iran which states that chapter I of the Iranian hudud law "deals with adultery, including whoring, and incest, satisfactory evidence of which is a confession repeated four times or testimony by four righteous men with the alternative of three men and two women, all of whom must be eyewitnesses. Capital punishment follows in cases of incest and other specified cases, e.g. when the adulterer is a non-Muslim and the abused a Muslim woman. Stoning is called for when the adulterer is married". The report further underlines that even if these strict rules of evidence are not met, the author can still be sentenced to death under the criminal law, where the rules of evidence are more flexible.

2.10. The author further draws the attention of the Committee to documentation submitted to the Swedish immigration authorities to support her claim, including a certificate testifying to her status as the wife of a martyr. She also includes a medical certificate from Kungälvs Psychiatric Hospital indicating that she suffers from anxiety, insomnia, suicidal thoughts and a strong fear for her personal safety if she were returned to Iran. The certificate states that the author has symptoms of post-traumatic stress syndrome combined with clinical depression.

The complaint

3.1. The author claims that there exist substantial grounds to believe that she would be subjected to torture if she were returned to Iran. Her forced return would therefore constitute a violation by Sweden of article 3 of the Convention. Furthermore, the author submits that there is a consistent pattern of gross human rights violations in Iran, circumstances that should be taken into account when deciding on expulsion.

The State party's observations on admissibility and merits

4.1. In its submission of 24 January 2000, the State party submits that it is not aware of the present matter having been or being the object of any other procedure of international investigation or settlement. As to the admissibility of the communication, the State party further explains that according to the Swedish Aliens Act, the author may at any time lodge a new application for a residence permit with the Aliens Appeal Board, based on new factual circumstances which have not previously been examined. Finally, the State party contends that the communication is inadmissible as incompatible with the provisions of the Convention, and lacking the necessary substantiation.

4.2. As to the merits of the communication, the State party explains that when determining whether article 3 of the Convention applies, the following considerations are relevant; (a) the general situation of human rights in the receiving country, although the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in itself determinative; and (b) the personal risk of the individual concerned of being subjected to torture in the country to which he/she would be returned.

4.3. The State party is aware of human rights violations taking place in Iran, including extrajudicial and summary executions, disappearances, as well as widespread use of torture and other degrading treatment.

4.4. As regards its assessment of whether or not the author would be personally at risk of being subjected to torture if returned to Iran, the State party draws the attention of the Committee to the fact that several of the provisions of the Swedish Aliens Act reflect the same principle as the one laid down in article 3, paragraph 1 of the Convention. The State party recalls the jurisprudence of the Committee according to which, for the purposes of article 3, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. The State party further refers to the Committee's general comment on the implementation of article 3 of the Convention which states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.

4.5. The State party recalls that the author of the present communication has not belonged to any political organization and has not been politically active in her home country. The author asserts that she has been sentenced to stoning by a Revolutionary Court in Iran, a judgement which she maintains would be enforced if she were to be sent back there. The State party states

that it relies on the evaluation of the facts and evidence and the assessment of the author's credibility made by the Swedish Immigration Board and the Aliens Appeal Board upon their examination of the author's claim.

4.6. In its decision of 13 July 1998, the Swedish Immigration Board noted that apart from giving the names of her sighe husband and her Christian friend, the author had in several respects failed to submit verifiable information such as telephone numbers, addresses and names of her Christian friend's family members. The Immigration Board found it unlikely that the author claimed to have no knowledge of her Christian friend's exact home address and noted in this context that the author did not even want to submit her own home address in Iran.

4.7. The Immigration Board further noted that the author during the initial inquiry had stated that a Pasdaran friend had given her photographs of people in the Evin prison who had been tortured, which she had requested "out of curiosity" and which she gave to her Christian friend although she "didn't know" what he wanted them for. The Immigration Board judged that the information provided by the author in relation to this incident lacked credibility and seemed tailored so as not to reveal verifiable details.

4.8. Finally, the Immigration Board questioned the credibility of the author's account of her marriage to the ayatollah, her relationship with the Christian man and the problems that had emerged as a result of it.

4.9. In its decision of 29 October 1999, the Aliens Appeal Board agreed with the assessment of the Immigration Board. The Board further referred to the travaux préparatoires of the 1989 Aliens Act which state that the assessment of an asylum-seeker's claim should be based on the applicant's statements if his/her assertions of persecution seem plausible and the actual facts cannot be elucidated. The Board noted that the author had chosen to base her application for asylum on her own statements only and that she had not submitted any written evidence in support of her claim, despite the fact that she had been told of the importance of doing so.

4.10. In addition to the decisions of the Immigration Board and the Aliens Appeal Board, the State party refers to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, according to which "the applicant should: (i) (t)ell the truth and assist the examiner to the full in establishing the facts of his case, [and] (ii) (m)ake an effort to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence. If necessary he must make an effort to procure additional evidence". According to the UNHCR Handbook, the applicant should be given the benefit of the doubt, but only when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility.

4.11. In the present case, the State party first reminds the Committee that the author has refused to provide verifiable information and that her reasons for doing so, i.e. that she was forbidden by her friend to do so and that new tenants are now occupying her apartment in Tehran, are not plausible.

4.12. Second, the State party maintains that it seems unlikely that the author, solely out of curiosity, would want to have photographs of tortured people in her possession. It seems even more unlikely that she would hand over such photographs to someone she had known only for a few months. Further, the State party notes that although the author claims that the authorities in Iran are in possession of a film showing her last meeting with her friend, no additional information has been provided by the author on this issue.

4.13. A third reason for doubting the author's credibility is that the author has not submitted any judgement or other evidence to support her claim that she has been sentenced for adultery by a Revolutionary Court. In addition, the author has not given any explanation as to why her sister-in-law was not able to obtain a copy of the Revolutionary Court's judgement when she visited Iran. Further, the State party notes that according to information available to it, the Revolutionary Courts in Iran have jurisdiction over political and religious crimes, but not over crimes such as adultery. Hudud crimes, i.e. crimes against God, including adultery, are dealt with by ordinary courts.

4.14. The State party further draws to the attention of the Committee that the author left Tehran without any problems only a few days after the incident which allegedly led to her detention, which would indicate that she was of no interest to the Iranian authorities at the moment of her departure. In addition, the author has claimed that she handed over her passport to her brother-in-law upon arrival in Sweden. However, the State party notes that her passport number is indicated on her asylum application which she submitted six days later. The explanation for this given by the author's counsel during the national asylum procedure, i.e. that the number might have been available from an earlier visit in Sweden by the author in 1996, is unlikely. There is nothing in the author's file that indicates that documents concerning her earlier visit to Sweden were available during the asylum application procedure.

4.15. The State party also draws the Committee's attention to the fact that the author has not cited any medical report in support of her statement that she was severely beaten by Ayatollah Rahimian only a few days before her arrival in Sweden. In addition, according to information received by the State party, the head of the Bonyad-e Shahid was, until April 1999, Hojatolleslam Mohammad Rahimian, but he does not hold the title of ayatollah.

4.16. Finally, the State party adds that when the author's sister-in-law applied for asylum in Sweden in 1987, she stated that her brother, the author's late husband, had died in a flying accident in 1981 caused by a technical fault. Ten years later, the author's brother-in-law and his family also applied for asylum and claimed that the author's husband had been killed for being critical of the regime and that he and his family would therefore be in danger of persecution if returned to Iran. The brother-in-law and his family were returned to Iran in November 1999 and the State party submits that it has not received any information indicating that they have been mistreated.

4.17. On the basis of the above, the State party maintains that the author's credibility can be questioned, that she has not presented any evidence in support of her claim and that she should therefore not be given the benefit of the doubt. In conclusion, the State party considers that the enforcement of the expulsion order to Iran would, under the present circumstances, not constitute a violation of article 3 of the Convention.

Counsel's comments

5.1. In her submissions dated 4 February and 6 March 2000, counsel disputes the arguments of the State party regarding the failure of the author to submit written evidence. Counsel states that the author has provided the only written evidence she could possibly obtain, i.e. her identity papers and documentation showing that she is the widow of a martyr. Counsel states that the ayatollah conducted the sighe or mutah wedding himself with no witnesses or written contract. As to her failure to provide the immigration authorities with a written court verdict, counsel submits that the author only has second-hand information about the verdict, as it was passed after her departure from Iran. She cannot, therefore, submit a written verdict. Counsel further disputes that the author's sister-in-law should have been able to obtain a copy of the verdict while visiting Iran. She further states that the author's sister-in-law long ago ended all contacts with the author because she strongly resents the fact that the author has had a relationship with any man after the death of her husband.

5.2. Counsel acknowledges that crimes such as adultery are handled by ordinary courts. However, she draws the attention of the Committee to the fact that the jurisdictional rules are not as strict in Iran as for example in the State party and that the prosecuting judge can choose the court. In addition, for a martyr's widow to ride alone with a Christian man in his car would probably fall under the heading of "un-islamic behaviour" and as such come under the jurisdiction of the Revolutionary Court. Even if this were not the case, counsel reminds the Committee that the author has only been informed that she has been sentenced to death by stoning by a court. Not being a lawyer, and in view of what she was told during her interrogation by the Zeinab sisters, the author assumes that the sentence was handed down by the Revolutionary Court and this assumption should not be taken as a reason for questioning the general veracity of her claim.

5.3. Counsel states that the author has given credible explanations for not being able or not wishing to provide the Swedish authorities with certain addresses and telephone numbers. Firstly, she had promised for the sake of security not to give her lover's telephone number to anyone and does not wish to break her promise even at the request of the immigration authorities. The Christian man always contacted the author on her mobile phone which he had given her for that purpose alone. The author left the mobile phone in Iran when she departed and as she never called her number herself or gave it to anyone, she cannot remember it. Further, counsel states that the address which is indicated on the author's visa application used to be her home address, but the author has repeatedly explained that new tenants are now living there and that she does not want to subject them to any difficulties caused by inquiries from the Swedish authorities. Finally, counsel stresses that the author has given detailed information about the neighbourhood, Aghdasiye, where her lover lived and that she has repeatedly underlined that she never knew the exact address since she always went to her secret meetings first by taxi to Meydon-e-Nobonyad where she was picked up by a car that brought her to the Christian man's home. Finally, all the author ever knew about the Christian man's relatives was that he had one sister and one brother living in United Kingdom and a son from a previous marriage living in Canada. She never met them and never asked their names.

5.4. Counsel underlines that the fact that the Swedish authorities do not find the author's explanations credible is a result of speculation based on the supposition that all people behave

and think according to Swedish or Western standards. The authorities do not take into account the prevailing cautiousness in Iran with respect to giving personal information, particularly to public officials.

5.5. With reference to the photographs of victims of torture which the author claims to have handed over to her lover, counsel submits that this fact in no way diminishes the author's credibility. The couple were engaged in a serious relationship and intended to marry and there was no reason for the author not to pass on such photos to a man in whom she had total confidence. Further, counsel underlines that the author has never argued that her handling of the photographs in question supports or has anything to do with her asylum claim.

5.6. Counsel notes that the State party observes that the author has not cited any medical certificate attesting to injuries resulting from the beatings she was subjected to by her sighe husband. Counsel reminds the Committee that the author left Iran the following day and that her main preoccupation was to arrive safely in Sweden. Counsel further states that most Iranian women are used to violence by men and they do not or cannot expect the legal system to protect them, despite the positive changes which have recently taken place in Iran in this respect. As an example, counsel states that an Iranian woman wishing to report a rape must be examined by the courts' own doctors as certificates by general doctors are not accepted by courts.

5.7. With reference to the fact that the author's passport number was given in her asylum application although she had claimed to have disposed of her passport upon arrival in Sweden, counsel states that there is no indication on the asylum application that the author's passport has been seized by the Immigration Board officer, which is the rule in order to secure enforcement of possible expulsion; this fact seems to support the author's version of events. In addition, the author has maintained that when filing her application she merely had to state her name, all other necessary details having appeared on a computer screen. This information has been corroborated by the Immigration Board registration officer who received the author's asylum application and who told counsel that, in recent years, a person granted a tourist visa is registered in a computer database, containing all available information, including passport numbers. The author had been granted a tourist visa for Sweden twice in recent years, so her account was absolutely correct.

5.8. Counsel notes that the State party has confirmed that the author's sighe husband was the head of the Bonyad-e Shahid, which should support the author's claim; he was generally referred to as "Ayatollah", even though his title was Hojatolleslam. Counsel reminds the Committee that there are only some 10 real ayatollahs in Iran. The great majority of mullahs are of the rank of hojatolleslam. However, mullahs who have gained power, particularly political power, are often referred to as Ayatollah out of courtesy, an illustrative example being Ayatollah Khamenei whose office demanded the rank of an ayatollah but who was in fact only hojatolleslam when he was appointed.

5.9. With reference to the State party's argument that the author left Iran without difficulty, counsel points out that this is consistent with the author's version of the events leading to her flight. She has maintained that at the time of her departure she was not yet of interest to the Iranian authorities since her sighe husband had suppressed the Pasdaran report to the Revolutionary Court.

5.10. Finally, counsel states that what the author's dead husband's relatives have stated about the circumstances surrounding his death has no impact on the author's case or her credibility. It should be noted that the author herself has never stated that her husband was assassinated by the regime, but only that she had doubts about the circumstances pertaining to his death.

5.11. In support of counsel's arguments she submits a medical certificate dated 22 November 1999 from a senior psychiatrist at Sahlgrenska Hospital, where the author was taken after an attempted suicide. The attempt was made after the Swedish police had taken her and her son from a reception centre for asylum-seekers to a detention centre to ensure the execution of her expulsion. The diagnosis made was deep depression combined with contemplation of suicide.

5.12. Counsel further encloses a letter dated 27 December 1999 from the leading Swedish expert on Islam, Professor Jan Hjärpe, who confirms the author's account concerning the institution of sighe or mutah marriages and the legal sanctions provided for in cases of adultery.

5.13. Counsel draws the attention of the Committee to the fact that the immigration authorities in examining the author's case have not considered the situation of women in Iran, existing legislation and its application, or the values of the Iranian society. Counsel states that the argumentation of the authorities, based almost exclusively on the author's failure to submit certain verifiable information, seems to be a pretext for refusing the author's application. In conclusion, counsel submits that according to the information provided by the author, there exist substantial grounds to believe that the author would be subjected to torture if returned to Iran and that the author has provided reasonable explanations for why she has not been able to or not wished to furnish certain details.

Additional comments submitted by the State party

6.1. In its submission dated 2 May 2000, the State party contends that the Swedish Immigration Board and the Aliens Appeal Board have ensured a thorough investigation of the author's case. It reminds the Committee that during the asylum procedure, the author has been repeatedly reminded of the importance of submitting verifiable information, but that she has chosen not to do so. The State party does not find the explanations given hereto convincing, reiterates that the burden of proof in principle rests with the author and maintains that the author's credibility can be questioned.

6.2. Finally, the State party draws the attention of the Committee to the fact that the author first alleged that she had been sentenced to death for adultery during an initial interview held with her in May 1998. The State party submits that the author thus has had ample time to present a written judgement or other evidence to support that claim.

Additional information from the State party and counsel, requested by the Committee

7.1. Having taken note of the submissions made by both the author and the State party regarding the merits of the case, the Committee, on 19 and 20 June 2000, requested further information from the two parties.

Submissions by counsel

7.2. In her submission of 1 September 2000, counsel confirms previous information given regarding: (a) the nature of sighe or mutah marriages and the fact that witnesses are not necessary, nor registration before a judge if the partners themselves are capable of conducting the ceremony correctly; (b) the activities of Bonyad-e Shahid, affirming that martyrs' widows are presented, in listings and photo albums, for temporary marriages to its employees and directors. Counsel supports the information given with letters from, inter alia, the Association of Iranian Political Prisoners in Exile (AIPP), the Support Committee for Women in Iran and Professor Said Mahmoodi, Professor of International Law at the University of Stockholm.

7.3. With regard to the alleged death sentence against the author, counsel submits that despite attempts by AIPP, it has not been possible to find any evidence that the author's Christian lover had been imprisoned and that they both have been sentenced to death by stoning for adultery. AIPP, as well as other sources, maintain that such information is not possible to get if the prison, the court or the case numbers is not known.

7.4. Counsel submits letters and information given by experts in Islamic law confirming that a sighe wife is bound by the rules regarding adultery and that she is prohibited from having a sexual relationship with any man other than her sighe husband. Adultery with a Christian man bears the sanction of stoning to death. Counsel further submits that the law in theory requires either four righteous witnesses or a confession to the sexual act for stoning to be ordered, but that the author's sighe husband, being a powerful man in society, would not have difficulties finding persons willing to testify. According to international human rights organizations, the eyewitness condition is rarely respected and stoning for adultery is still frequently practised in Iran, despite recent reforms in the country.

7.5. Reference and further clarifications were made with regard to telephone calls received by the author's sister-in-law (see para. 2.8). The author's previous lawyer had told Swedish authorities that the sister-in-law in Sweden had been contacted by Hojatolleslam Rahimian who told her that the author had been found guilty. Counsel has since been in contact with the sister-in-law directly and states that the correct version of events was that the sister-in-law, shortly after the author's arrival in Sweden, was contacted by a man in rage who did not give his name but wanted to know the author's whereabouts in Sweden. The man was aggressive and knew all the details of the author's past and said that she had no right to leave Iran. The sister-in-law further states that she never attempted to verify the existence of a court judgement when she visited Iran.

7.6. With reference to the Committee's request for additional information, counsel states that the author's older son, born in 1980, tried to seek asylum in Sweden from Denmark in March 2000. In accordance with the Dublin Convention, after a short interview, he was sent back to Denmark where he is still waiting to be interrogated by Danish immigration authorities. Since his case had not yet been examined by the Danish authorities, counsel requested Amnesty International to interview him.

7.7. The records of the interview confirm statements made by the author regarding her sighe marriage and of her being called to the Bonyad-e Shahid office several times a week.

The son also states that when his mother left she had told him that he had to leave school and hide with close relatives of hers in Baghistan. He received private teaching to become a veterinary surgeon and subsequently enrolled in University. On 25 January 2000 he was summoned to the university information office by the intelligence service, Harasar, from where two men took him to the Bonyad-e Shahid office in Tehran where he was detained, interrogated, threatened and beaten. He claims that the interrogators wanted to know his mother's whereabouts and that they threatened to keep him and beat him until his mother came "crawling on all fours" and then they would "carry out her sentence". The author's son claims that it was during the interrogation that he fully realized his mother's situation, although he had not spoken to her since she left the country.

7.8. In conclusion, counsel maintains that although it has not been possible to obtain direct written evidence, for the reasons given above, the chain of circumstantial evidence is of such a nature that there can be no reason to doubt the author's credibility. Reference is further made to a recent judgement of the European Court of Human Rights dated 11 July 2000, regarding an Iranian woman asylum-seeker who allegedly had committed adultery and who feared death by stoning, whipping or flogging if returned. As in the case of the author no written evidence existed in the form of a court judgement, but the Court stated that it "is not persuaded that the situation in the applicant's country of origin has evolved to the extent that adulterous behaviour is no longer considered a reprehensible affront to Islamic law. It has taken judicial notice of recent surveys of the current situation in Iran and notes that punishment of adultery by stoning still remains on the statute book and may be resorted to by authorities."[1] The Court ruled that to expel the applicant would be a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Submissions by the State party

7.9. The State party made additional submissions on 19 September and 19 October 2000. With reference to the Committee's request for additional information, the State party reiterates its view that the burden is on the author to present an arguable case. It maintains that the author has not given any evidence in support of her claim and therefore there are serious reasons to doubt the veracity of those claims.

7.10. With regard to the author's alleged sighe marriage, the State party confirms that the law in Iran allows for such temporary forms of marriage. It further argues that although sighe marriages are not recorded on identification documents, such contracts should, according to reliable sources, contain a precise statement of the time-period involved and be registered by a competent authority. In practice, a religious authority may approve the marriage and issue a certificate. Given that the author claims that her sighe or mutah marriage was conducted by Hojatolleslam Rahimian himself and that no contract was signed, the State party has doubts as to whether the author entered into a legally valid marriage.

7.11. The State party points out that counsel in her last submissions to the Committee has included certificates and other information which have not previously been presented to the

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[1] Jabari v. Turkey (para. 40), European Court of Human Rights, 11 July 2000.

Swedish immigration authorities. As the new information seems to be invoked in order to prove the existence of sighe marriages in Iran, the State party emphasizes that it does not question this fact, nor the existence of the Bonyad-e Shahid, but, inter alia, the author's credibility in respect of her personal claims of having entered in such a marriage. The author's credibility is further diminished by the inconsistent information given relating to phone calls received by the author's sister-in-law.

7.12. In addition, even if the Committee does accept that the author has entered into such a marriage, the State party asserts that this in itself would not constitute substantial grounds for believing that the author would be in danger of being tortured or killed if returned to Iran.

7.13. It is further submitted that according to the Swedish Embassy in Tehran, it is not possible for the Embassy to inquire whether a competent family court, rather than the Revolutionary Court, has issued a judgement regarding the author. However, the author should, according to the Embassy, by proxy be able to obtain a copy of the judgement if it exists, or at least obtain the name of the court and the case number. The State party further submits that only a married person can be convicted of adultery; it therefore seems unlikely that the author's lover would have been sentenced to death as claimed.

7.14. In addition, the State party claims that neither reports from the United States Department of State nor from Amnesty International confirm the assertion by counsel that stoning is frequently practised in Iran.

7.15. With regard to the judgement by the European Court referred to by counsel, the State party points out that in that case the applicant had been granted refugee status by UNHCR and the European Court had relied on UNHCR's conclusions as to the credibility of the applicant and the veracity of her account. In the present case, two competent national authorities have scrutinized the author's case and found it not to be credible.

7.16. Finally, with regard to the information given by the author's son, currently residing in Denmark where he is seeking asylum, the State party underlines that this information is new and has not been presented to the national authorities. According to the State party, information submitted at a very late stage of the proceedings should be treated with the greatest caution. It further emphasizes a number of contradictory points in the newly submitted evidence: (a) during the son's interrogation by the Swedish Board of Immigration no mention was made of any court judgement or death sentence, information which, in the State party's view, would have been relevant in the circumstances; (b) the son gave contradictory answers to the question of whether he possessed a passport. The State party also finds it unlikely that the author was not aware of, and has never invoked, the harassment to which her son was allegedly subjected after her departure from Iran.

Issues and proceedings before the Committee

8.1. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another

procedure of international investigation or settlement. The Committee is further of the opinion that all available domestic remedies have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist. Since both the State party and the author have provided observations on the merits of the communication, the Committee proceeds immediately with the considerations of those merits.

8.2. The issue before the Committee is whether the forced return of the author to the Islamic Republic of Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3. The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.4. From the information submitted by the author, the Committee notes that she is the widow of a martyr and as such supported and supervised by the Bonyad-e Shahid Committee of Martyrs. It is also noted that the author claims that she was forced into a sighe or mutah marriage and to have committed and been sentenced to stoning for adultery. Although treating the recent testimony of the author's son, seeking asylum in Denmark, with utmost caution, the Committee is nevertheless of the view that the information given further corroborates the account given by the author.

8.5. The Committee notes that the State party questions the author's credibility primarily because of her failure to submit verifiable information and refers in this context to international standards, i.e. the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, according to which an asylum-seeker has an obligation to make an effort to support his/her statements by any available evidence and to give a satisfactory explanation for any lack of evidence.

8.6. The Committee draws the attention of the parties to its general comment on the implementation of article 3 of the Convention in the context of article 22, adopted on 21 November 1997, according to which the burden to present an arguable case is on the author of a communication. The Committee notes the State party's position that the author has not fulfilled her obligation to submit the verifiable information that would enable her to enjoy the benefit of the doubt. However, the Committee is of the view that the author has submitted

sufficient details regarding her sighe or mutah marriage and alleged arrest, such as names of persons, their positions, dates, addresses, name of police station, etc., that could have, and to a certain extent have been, verified by the Swedish immigration authorities, to shift the burden of proof. In this context the Committee is of the view that the State party has not made sufficient efforts to determine whether there are substantial grounds for believing that the author would be in danger of being subjected to torture.

8.7. The State party does not dispute that gross, flagrant or mass violations of human rights have been committed in Iran. The Committee notes, inter alia, the report of the Special Representative of the Commission on Human Rights on the situation of human rights in Iran (E/CN.4/2000/35) of 18 January 2000, which indicates that although significant progress is being made in Iran with regard to the status of women in sectors like education and training, "little progress is being made with regard to remaining systematic barriers to equality" and for "the removal of patriarchal attitudes in society". It is further noted that the report, and numerous reports of non-governmental organizations, confirm that married women have recently been sentenced to death by stoning for adultery.

9. Considering that the author's account of events is consistent with the Committee's knowledge about the present human rights situation in Iran, and that the author has given plausible explanations for her failure or inability to provide certain details which might have been of relevance to the case, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Iran or to any other country where she runs a risk of being expelled or returned to Iran.

10. Pursuant to rule 111, paragraph 5, of its rules of procedure, the Committee would wish to receive, within 90 days, information on any relevant measures taken by the State party in accordance with the Committee's present views.